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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : September 11, 2015*

+ **RFA(OS) 72/2015**

BRAHM SINGH Appellant
Represented by: Mr.Arun Kaushal, Advocate with
Appellant in person

versus

PRAMILA DEVI Respondent
Represented by: Ms.Anjana Gosain, Advocate
with Mr.Vishu Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA
PRADEEP NANDRAJOG, J. (Oral)

CM No.12787/2015

For the reasons stated in the application 64 days delay in filing the appeal is condoned.

RFA(OS) 72/2015

1. Although no ground to the effect that there is no evidence to show the location of the 1200 square yards land belonging to the respondent comprised in Khasra No.731 in the revenue estate of Village Madanpur Khadar and hence the impugned decree cannot be sustained has been urged in the appeal, we had issued show cause notice in the appeal on the last date

of hearing noting said fact so that learned counsel for the respondent would be put to notice, that amongst other grounds urged in the appeal, said ground was also to be met by the respondent.

2. Learned counsel for the respondent states that she is ready to answer said ground noted in the order dated July 21, 2015 issuing notice in the appeal.

3. But to our horror today, learned counsel for the appellant states that the Court cannot compel the appellant to argue the appeal on a point which this Court thinks is relevant and thus learned counsel, fights (a figure of speech) with the Court and insists that the appeal should strictly be decided by noting the contentions advanced by him. The appellant who is sitting in Court supports the counsel and wants this Court to strictly decide the appeal by noting the arguments addressed by learned counsel for the appellant.

4. The respondent Pramila Devi sued through her attorney Sh.Manoj Kumar. The suit was one for permanent injunction. As per Pramila Devi, she purchased 1200 square yards land comprised in Khasra No.731 ad-measuring 30 bigha, in the revenue estate of Madanpur Khadar by virtue of a registered sale-deed dated July 26, 1999 and based thereon mutation was sanctioned in her name in the Khata Khatoni, Ex.PW-1/1. Aksh Shajra Ex.PW-2/1 showed the boundaries of the land comprised in Khasra No.731. The location of the land purchased by her was as per the site plan Ex.PW-1/3. She pleaded that Manoj was the caretaker of her land who informed her that the appellant had attempted to trespass upon her land and had attempted to demolish a wall on one side. She learnt that the appellant was not the owner of any piece of land comprised in Khasra No.731 because he had sued for specific performance of an alleged agreement to sell statedly

executed by one Gulshan Kumar Gulati in his favour which suit filed by him was disposed of passing a money decree in sum of ₹76,000/- in his favour because evidence led at the trial in said suit showed that Gulshan Kumar Gulati had no right title or interest in any part of land comprised in Khasra No.731 in the revenue estate of Village Madanpur Khadar.

5. We note that Braham Prakash, the appellant, has filed a Regular First Appeal No.538/2002 against the said judgment referred to by the respondent in the suit instituted by her, and the certified copy of the entire record of the suit proceedings as also the regular first appeal filed by Braham Prakash is Ex.PW-1/4.

6. In the written statement filed by him the appellant has not denied averments made in the plaint that the plaintiff purchased 1200 square yards land comprised in Khasra No.731 by a sale-deed dated July 26, 1999 and in the revenue record her name has been mutated, but it has been denied that the plaintiff is in possession of the suit land. It is pleaded that the appellant is in possession of the suit land pursuant to an agreement entered into by him with Gulshan Kumar Gulati.

7. On the pleadings of the parties two issues were settled: (i) Whether the plaintiff is entitled to the injunction as prayed for; and (ii) Whether the plaintiff is not in possession of the suit land.

8. Finding returned by the learned Single Judge is in favour of the plaintiff i.e. the respondent and a decree has followed.

9. The record of the suit would show that whereas the plaintiff has proved the documents which we have referred to hereinabove while noting the case of the plaintiff, the appellant has proved no document, though in his affidavit there is a reference to an order Ex.DW-1/1 passed by the Division

Bench of this Court in RFA No.538/2002. The appellant has also filed the affidavit of one Ravinder Singh as per whom, Gulshan Gulati sold 3 bigha and 7 biswa of land to the appellant from out of 30 bigha land comprised in Khasra No.731 in the revenue estate of Village Madanpur Khadar.

10. The appellant having admitted that the respondent is the owner of 1200 square yards land comprised in Khasra No.731 could have only questioned entitlement of the respondent to maintain and sustain the suit with reference to the location of the said 1200 square yards land purchased by the respondent because not only the appellant admits title of the respondent but even admits mutation in her name in the Khata Khatoni, Ex.PW-1/1 and upon further proof that he had even a semblance of title and semblance of claim of being in possession of some land comprised in Khasra No.731 in the revenue estate of Village Madanpur Khadar.

11. That is why, while issuing notice in the appeal we had referred to said aspect of the matter, but today learned counsel for the appellant states at the bar, and which statement we heard with surprise, that the appellant does not dispute the location of the land of the respondent. If this be so, that would be the end of the matter for the appellant.

12. In view of the stand taken by learned counsel for the appellant as noted above, we see no infirmity in the view taken by the learned Single Judge because the respondent has proved owning 1200 square yards of land comprised in Khasra No.731 in the revenue estate of village Madanpur Khadar. The said khasra ad-measures 30 bighas and notwithstanding there being no evidence that at site a titima was cut and reflected in the revenue map, since learned counsel for the appellant concedes that at site the 1200 square yards land purchased by the respondent is as per site plan Ex.PW-1/3,

there is no scope to interfere with the impugned decree.

13. Now we note the arguments advanced in the appeal. The first argument advanced is that in the plaint Pramila Devi has mentioned her age to be 80 years. This argument counsel wants us to note as an argument, but when counter questioned as to where is the argument? Because what the counsel states is a matter of fact pleaded by the respondent in paragraph 1 of the plaint and therefore gives birth to the question : What does the learned counsel want to argue, warranting a decision from said fact? Learned counsel simply states that since the plaintiff was aged 80 years he only wants to state said fact and this should be treated as his argument. We can only express our surprise and regret at the abysmal depth of the pit in which the argument collapses.

14. The second argument is that since Pramila Devi maintained the action through Manoj Kumar who proved the power of attorney Ex.PW-1/6 executed in his favour to look after the suit land, the first three pages of the said power of attorney do not bear the signatures of the respondent and only the last does. We asked learned counsel for the appellant whether therefrom he intends to question the authority of Manoj Kumar to institute the suit on behalf of the respondent by urging that the document has not been properly proved or whether the appellant questions the authenticity of the first three pages of the power of attorney. Learned counsel for the appellant states that he has no clue what he wants to infer by way of an argument and only wants this Court to record that the first three pages of the power of attorney Ex.PW-1/6 do not bear the signatures of the respondent.

15. We have perused the testimony of Manoj Kumar. He has deposed that his authority to file the suit was based on the power of attorney Ex.PW-

1/6. We find that no question has been put to Manoj Kumar with respect to Ex.PW-1/6. Thus, there is no scope to urge any submission regarding Manoj Kumar's authority to sue as the attorney of the respondent or the effect of the first three pages thereof not being signed by the respondent.

16. The last argument advanced is that in the suit seeking specific performance of an agreement to sell dated July 08, 2000 which was dismissed by the learned Additional District Judge on July 22, 2002, the appellant has filed an appeal.

17. As we have noted hereinabove, photocopy of the certified copy of the record of suit No.72/2000 filed by the appellant against Gulshan Kumar Gulati and one Ratan Bagri for specific performance of the agreement to sell dated July 08, 2000 and grounds of appeal in RFA 538/2002 have been exhibited collectively as Ex.PW-1/4.

18. The plaint filed by the appellant against Gulshan Kumar Gulati and Ratan Bagri would show that case pleaded by the appellant is that after Gulshan Kumar Gulati entered into an agreement to sell, agreeing therein to sell 1 bigha land comprised in Khasra No.731, Village Madanpur Khadar to him, he learnt that Gulshan Kumar Gulati was intending to sell the land to somebody else and part with its possession. Apart from seeking a decree for specific performance the appellant also claimed a decree to injunct Gulshan Kumar Gulati to sell the suit land.

19. Whatever may be the fate of the appeal filed by the appellant the fact of the matter would remain that as of today the appellant cannot claim to be in possession of any land comprised in Khasra No.731 in Village Madanpur Khadar because only upon appellant's succeeding in the suit seeking specific performance of the agreement to sell dated July 08, 2000 which

appellant claims to have entered into with Gulshan Kumar Gulati can the appellant gain title and possession of one bigha land in Khasra No.731 in the revenue estate of Village Madanpur Khadar.

20. Thus, even the ground which we thought was relevant when we had issued notice in the appeal does not make out any case to set aside the impugned decree notwithstanding there being deficiency in evidence of not bringing out with clarity as to out of 30 bigha land comprising Khasra No.731 in the revenue estate of Village Madanpur Khadar, where exactly the 1200 square yards land purchased by the respondent was situated, because the appellant has failed to establish any title or possessory right to even an inch of land comprised in Khasra No.731 in the revenue estate of Village Madanpur Khadar. He claims right to 1 bigha land under an agreement to sell dated July 08, 2000 which Gulshan Kumar Gulati has executed in his favour, but his case pleaded in suit No.72/2000 seeking decree for specific performance of said agreement admits that possession was not handed over to him by Gulshan Kumar Gulati. He sought an injunction against Gulshan Kumar Gulati to sell the land to a third party. Denying specific performance as prayed for money decree has been passed against the appellant and he is in appeal. Thus, as of today the appellant cannot even raise a dispute with the respondent qua the location of the land of the respondent vis-a-vis any land in Khasra No.731 in the revenue estate of Village Madanpur Khadar because the appellant neither has title nor possession of any land in said Khasra.

21. The appeal is accordingly dismissed with cost against the appellant and in favour of the respondent.

22. CM No.12786/2015

Since the appeal itself has been dismissed the instant application which seeks a stay of operation of the impugned decree is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 11, 2015

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